111-612

Supreme Court of the U. S.

AT THE OCTOBER TERM THEREOF, 1883.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Plaintiff in Error*,
vs.
HELEN PITKIN.
} No. 66.

BRIEF OF APPELLANT

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Counsel for Appellant.

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CONNECTICUT MUTUAL LIFE INS. CO.
vs.
HELEN PILKIN.
No. 66.

ASSIGNMENT OF ERRORS.

First Error. The court below erred in accepting and retaining jurisdiction of this case, and in refusing to sustain plaintiff's (in error) motio nfound on page 16 of record to dismiss the suit.

Second Error. The court erred in refusing to sustain plaintiff's (in error) demurrer to the evidence and to instruct the jury as prayed on page 85 of record, and further erred in refusing to instruct the jury as prayed on pages 106, 107, and 108 of record.

Third Error. The court erred in permitting the introduction of the testimony set forth on pages 19 and 20 of brief.

Fourth Error. Court erred in permitting non-professional witnesses in this case to give their opinions of the condition of Pilkin's mind prior to his death, but should have confined the testimony of such witnesses to the facts known to them.

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This suit was brought here from the United States Circuit Court for the Western District of Missouri.

It is an action on two policies of insurance, one for $5,000, and one for $423, issued on the life of George E. Pitkin.

Plaintiff below, in her petition, sets up the policies, alleges the death of the insured, and prays judgment for the amount of the insurance, and interest.

Defendant below admits the policies and death of the assured, and avers that the said assured, George E. Pitkin, came to his death by his own hand, in violation of the express conditions of said policies, and that he became, during his lifetime and after the issuance of said policies, so addicted to the use of alcoholic liquors as to thereby impair his health, and that in securing said policies he made untrue representations concerning his habits of temperance.

Plaintiff below replied, denying the use of intoxicating liquors by the assured to the extent set up in the answer, and also denying the untruthful statements alleged in the answer in the procurement of the policy sued on, but admitted that the assured came to his death by his own hand, as charged in the answer, and averred that when said assured took his own life he was not of sound mind, and was irresponsible in law therefor. The case was tried by a jury, who rendered a verdict for the amount of the policies sued on, with interest.

The court below, after an unsuccessful motion for a new trial and to arrest the judgment, filed by defendant below, rendered judgment against defendant, from which a writ of error was prosecuted to this court.

To reverse the judgment of the court below in this case, plaintiff in error relies upon the following points and authorities:

I.

The court which tried this cause had no jurisdiction thereof, and the judgment rendered in this case is void, for want of jurisdiction in the court which rendered it.

This suit was instituted in the county of Jackson, which lies on the western boundary of the State, and within the Western District of Missouri. The summons served on defendant was directed by the Circuit Clerk of the county of Jackson to the Sheriff of the city of St. Louis, which lies on the eastern border of the State, and within the Eastern District of Missouri. At the return of the summons, appellant appeared and moved to quash the summons, and for that purpose only, for the reason that the clerk had no jurisdiction to issue it, and that the court had no jurisdiction of the action. The court

overruled the motion, to which action the appellant excepted. (See page 17 of record, and also pages 29 and 31.)

By section 6013 of the Revised Statutes of Missouri, Vol. 2, page 1182, it is provided as follows:

"Any insurance company, not incorporated by or organized under the laws of this State, desiring to transact any business, by any agent or agents, in this State, shall first file with the Superintendent of the Insurance Department a written instrument or power of attorney, duly signed and sealed, appointing and authorizing some person, who shall be a resident of this State, to acknowledge or receive service of process, and upon whom process may be served, for and in behalf of such company, in all proceedings that may be instituted against such company in any court of this State, or in any court of the United States in this State, and consenting that service of process upon any agent or attorney appointed under the provisions of this section shall be taken and held to be as valid as if served upon the company, according to the laws of this or any other State."

By section 5926, Vol. 2, page 1153, of said statutes, the office of Superintendent of the Insurance Department of Missouri is located and established in the city of St. Louis. The writ or summons in this case was served in the city of St. Louis on the person whose name was lodged with the Superintendent of Insurance, as required by law. (See record, page 10.)

The Statutes of Missouri, Vol. 1, sec. 3481, page 595, provides where suits shall be brought, and is as follows:

"Suits instituted by summons shall, except as otherwise provided by law, be brought, *first*, when the defendant is a resident of the State, either in the county within which the defendant resides or the county within which the plaintiff resides, and the defendant may be found; *second*, when there are several defendants, and they reside in different counties, the suit may be brought

in any such county; *third*, when there are several defendants, some residents and others non-residents of this State, suit may be brought in any county in which any defendant resides; *fourth*, when all the defendants are non-residents of the State, suit may be brought in any county, &c., &c."

Section 3482 provides that suits by attachment against the property of a person shall be brought in the county where the property is found.

Section 3483 requires suits affecting real estate to be in the county where such real estate is.

Section 3489, Vol. 1, page 596, provides, concerning the service of summons, as follows:

"A summons shall be executed, except as otherwise provided by law, either, *first*, by reading the writ to the defendant and delivering to him a copy of the petition; or, *second*, by delivering to him a copy of the petition and writ; or, *third*, by leaving a copy of the petition and writ at his usual place of abode with some person of his family over the age of fifteen years; or, *fourth*, where defendant is a corporation or joint stock company, organized under the laws of any other State or county, and having an office *or doing business in this State*, by delivering a copy of the writ and petition to any officer or agent of such corporation or company in charge of any office or place of business; or, if it have no office or place of business, then to any officer, agent, or employee in any county where such service may be obtained."

This last section has no application to foreign insurance companies, for the reason that special provision is made by section 6013 for service of summons upon a particular agent of such companies.

Baile *v.* Equitable Fire Ins. Co., 68 Mo. Rep., 617.

The service upon foreign insurance companies is a matter of stipulation between such companies and the

State of Missouri. By section 6013 the foreign insurance company is required to *consent* to be *found at a certain place* in the State, to wit: at St. Louis. They must have some one *there* to receive service of summons. This provision takes such companies out of the operation of the general laws of the State, governing service of summons upon other corporations, and fixes the abode of such companies for purposes of suits in St. Louis *only*. That being the case, no other courts than those in St. Louis have jurisdiction over them, and a forced appearance of such a company in court elsewhere, to protect itself, does not give jurisdiction.

68 Mo. Rep., *supra*, 617;
Middough *v.* R. R. Co., 51 Mo. Rep. 520.

In the United States Circuit Court, Eastern District of Missouri, Judge Treat rendered the opinion of the court in the case of George H. Small vs. Robert H. Montgomery, as follows:

"Small vs. Montgomery; demurrer. The only question presented is, whether the special appearance of the defendant in the State court whence the cause was removed, for the purpose of having said removal to this court, constitutes such a general appearance as operates a waiver of defective or illegal service, so that objection to said service cannot be here raised.

"Judge Drummond, in the case cited by counsel for defendant, holds that such special appearance is not a waiver of defendant's rights, nor does it operate a general appearance, nor prevent his objecting in the Federal Court to the service.

"Atchison vs. Morris, 11 Fed. Rep., 582.

"In the case under consideration, the petition for removal was filed before the time for pleading had expired. The language of Judge Curtis, in Sayles vs. Ins. Co., 2 Curtis C. C., 212, seems to be broad enough to sustain the views of plaintiff's counsel; but that eminent

judge put the appearance for the removal of the cause upon the same footing as pleading to the merits, whereby pleas in abatement are waived. There is, however, a marked distinction between the two proceedures. The former is had merely to secure the constitutional and statutory right to have all questions heard and disposed of solely by the Federal Courts, and the latter is, by established law, a waiver of all antecedent or dilatory pleas, with one exception, so that the party puts himself exclusively upon the merits of the controversy.

"The act of 1875 differs from the act of 1789 as to the time of filing the petition, and says nothing as to the formal appearance entered. It has been often held that while a general appearance waives defective service, yet a special appearance, as in this case, has no such effect.

"We concur fully in the decision of Judge Drummond, supra.

"(See, also, Blair vs. Tuttle, 1 McCrary, 372.)

"The demurrer is sustained.

"McCrary, J., concurs."

II.

The testimony in this case does not show the insanity of George E. Pitkin at the time of taking his own life. There is no evidence in the case establishing a single trait of insanity. No disease, physical or mental, is disclosed; no change in conduct ascribable to a disordered mind; no act of said Pitkin, not consonant with his real surroundings, and traceable to actual and real causes existing and controlling said Pitkin at the time of the act.

There can be no insanity where the thinking and willing power of the mind operates from cause to effect upon real subjects. The mind is said to be composed of three powers; the power to know, the power to judge, the power to will. If neither of these is disconcerted or perturbed by delusions, impulses springing from unreal and fanciful subjects, or is not invaded or broken down by imbecility, there is no insanity in the subject.

The sanity and insanity of a given person cannot both be established by the same evidence. A witness cannot give an insane character to a sane act of a person by affecting surprise at the act itself after it is done. If a person's acts, independent of the result to which they lead, do not in and of themselves at the time they occur import derangement of the mind, and are not such as to be accepted as symptoms of insanity; they cannot be utilized by a willing or interested witness to prove insanity of the persons doing the acts, else the proof of insanity resides not in the acts themselves, but in the construction which the observer puts upon them afterwards. One may kill himself while sane; he may think and talk about it while sane; he may in a state of sanity arrange for suicide, and all the saying and doings of the party contemplating self-destruction maybe as consistent with, and as conducive to, that end as though the object were different. Conduct no more appropriate to a different result would be accepted as rational, though the mind of the persons acting, operated in no mere faithful obedience to the law of cause and effect than while contemplating and accomplishing self-destruction. The act of suicide imports in law, no more evidence of insanity in the actor than the act of baptism; conversations and preparations looking to that result, though accompanied with much emotion, expose to the observer the most convincing proof of sanity, while conduct equally conducive to suicide, for reasons operating quite as clearly upon the affected person, borrows its character from the gloomy impressions made upon those who believe suicide to mean insanity.

If George E. Pitkin was insane at the time of taking his own life, there must have been present during the history of such insanity symtoms thereof. There can be no species of derangement which does not fur-

nish its symtoms, otherwise sanity and insanity are confounded. A party upon whom the burden of proving insanity rests responds with testimony, disclosing symtoms of the particular mental disorder which it is claimed exists in the subject. There are many varieties of insanity, each having its family of symtoms, and neither existing without them. In this case no symtom of insanity of any variety has been shown. The testimony which has done service in this case to secure the verdict herein complained of is barren of any legal import whatsoever. showing insanity

The facts show to the court that Mr. Pitkin up to the time of his death was chief clerk to the cashier and auditor of the Fort Scott Railroad Co. (Record, page 37.) Mr. Prescott, cashier and auditor of that company, resigned. (Page 39.) Mr. Pitkin wanted the place which Prescott held, (page 39,) *and expected to get it.* (Page 39.)

First witness, Coates, saw no evidence or symtoms of insanity at any time in Pitkin, though knew him well.

Witness St. Clair, says he, Pitkin, said he had received a letter from Mr. Merriman (one of the officers of the company) which he construed as promising him the place vacated by Prescott. (Page 39.) *He was very certain of getting it,* (page 39,) and so said. This was two or three weeks before his death. He was seen several times after this by same witness, who says Pitkin told him he was to get the place. (Page 40.) Saw him Sunday before his death, when he said he was not going to get the place. Talked about the failure to get it; "looked wild;" face was red and he was excited. Talked about his disappointment as any person would have done. (Page 41, Cross Ex..)

MAGGIE SMITH lived in Pitkin's family; on cross-examination says he, Pitkin, looked cross; did nothing unusual, but did'nt act as usual; looked wild; had blared eyes.

HARBURG, (page 47,) says Pitkin came to his place (cigar store;) said he must bid him good bye; "I am going to a country where there is no return;" had a queer look; Pitkin gave to one Dopper power in writing to install officers of a lodge, Pitkin giving as a reason therefor that he would not be there; when asked what he meant by saying he was going to a country where there was no return, replied that he meant what he said, (page 49;) talked about real subjects only; what witness meant by "wild look" was a sharp earnest look. (Page 48.)

DOPLER says Pitkin gave him power to install officers of the lodge, giving as a reason thas he, Pitkin, was going to a land where nobody returns; looked red in the face; had a wild look; by "wild look," eyes opened intensely wide, (page 54;) thought it strange that he should make the remark he did; that was all I thought about it. (Page 55.)

STREINE, page 55: Pitkin came to his place, got a drink of wine; his necktie was out of shape; his face was red; his eyes staring at me. When he passed out I paid no further attention to him, (page 57.)

Cross-Examination.

His appearance was not sufficiently striking to attract my attention, (page 57.)

GASTON, page 59: Pitkin came to my place, asked for a glass of wine, which I gave him (Sunday morning, time of suicide). Said he intended to take two lives that day. Asked him what he meant. He said he intended to kill Mr. Prescott and himself; that his children were robbed. Said Mr. Prescott was to blame that he did not get his place. I reasoned with him. Put his hand on his head, said he would kill himself; looked excited and wild.

Cross-Examination.

He was cheerful day before. I don't know as I would have noticed anything peculiar if he had not talked of killing himself, page 62.

FERRY, page 65: Met Pitkin; was agitated and nervous; said he was going to hell, in reply to an inquiry why he was not at church. His face was flushed, his eye dilated and bright; no expression in it.

Cross-Examination.

Never knew Pitkin to show any symptoms of insanity before, (page 67.) His saying that he was going to hell left no serious impression on my mind, (page 67.) This was about an hour and a half before he killed himself, (page 68.) Saw him every day in the office.

SPRAGUE, page 68: Formed no impression of him (Pitkin); saw him about three hours before his death.

ALDRICH, page 70: Pitkin expected to get Prescott's place; Mr. Smith and myself expected to receive it. Pitkin came to the office Sunday morning on which he killed himself; asked for Prescott; went into Prescott's private office, shut the door. Thought he had a very peculiar look; never had seen before—a wild look.

Cross-Examination.

He, (Pitkin,) when he came in failed to say good morning; he muttered so that I did not understand him. These things made me think he was out of his mind. (page 72.)

SMITH testifies that Prescott was auditor, Pitkin assistant auditor of Fort Scott Road; office of cashier and auditor were divided, and I and Smith filled the vacancy occasioned by Prescott's retirement. Saw Pitkin on the

Sunday morning that he killed himself, about 12 o'clock; Pitkin came in, asked for Prescott; heard some loud conversation; Pilkin came out; I heard pistol-shot, and feared Pitkin had shot himself; Pitkin was intensely excited when he came in; had a wild look.

Cross-Examination.

I am taking a retrospective view of his conduct. The fact that he killed himself had great weight with me, (page 76.) I have no opinion on the subject. (page 77.)

PRESCOTT. I was auditor and cashier; Charles Merriaiman, of Boston, was treasurer. Merriman had the appointing of my successor. (page 78.) Knew Pitkin for nine years; Pitkin was an applicant for the vacant place and *was the only one I knew.*

Pitkin gave me to understand that he expected the appointment, that Mr. Merriman had intimated that he should have it. I told him I hoped he would get it if it was right he should have it. Pitkin was notified not more than *two days before his death that he would not get the place.*

I saw Pitkin on Sunday of his death. Pitkin came into my room; said I was the cause of bringing starvation to his family; he was somewhat violent; he looked like a crazy man; I never saw a crazy man, but as I suppose they look; said he would be dead in a few moments, and that I ought to be. (page 80.)

He looked unnatural, eyes glared; looked like he would jump at me.

Cross-Examination.

I have no doubt I was excited; I am color-blind, cannot describe what I see always; while with me he talked only of actual occurrences.

He seemed to vent his vengeance on me for prevent-

ing his getting the place; that seemed to be the sole subject in his mind.

He complained that I had caused starvation in his family; that was the cause of his animosity to me; I have no doubt that he thought I had prevented his getting the place, (page 82.)

I had thought he was dissipated, 83. I think a man who kills himself is insane; if he had not been in the room at all I should have thought him insane if he had killed himself, (page 85.)

This was all of plaintiff's evidence. (p. 85.)

Defendant below then asked the court to instruct the jury that upon the pleadings and evidence, plaintiff could not recover; court refused to so instruct, and defendant excepted.

It is confidently asserted that the foregoing testimony furnished not a single symptom of insanity.

Plaintiff below has presented a full explanation of the extravagant conduct of deceased Pitkin; he was in the employment of a great railroad company up to the hour of his death, an assistant cashier and auditor. He aspired to become auditor and cashier; no trace or symptom of insanity was discovered in him up to within two days of his death. The business in which he was engaged for the company furnished a constant test of his sanity. He was keeping the accounts, and handling the funds of the company. He believed from his long connection with the company that he was entitled to promotion; he had been promised by Mr. Merriman that he should be; he was disappointed in this, and believed that Prescott had defeated him for the place. All the excitement through which he passed sprung from a real sense of injury which he felt in consequence of his defeat. He harbored a feeling of revenge against Prescott for the

injury he believed Prescott had done him, and was in despair about the future.

In obedience to ~~the impulse~~ his feeling of revenge he was willing to kill Prescott, (see Gaston's evidence, p. 59,) but was dissuaded therefrom by Gaston; on account of the dispair into which his disappointment plunged him, he concluded to and did kill himself. In the proof which plaintiff offered to show that Pitkin killed himself, the reason for so doing is proved.

The Court charged the jury, (page 110,) that if he (Pitkin) was impelled to the act (of self destruction) by an insane impulse which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition, that he could not exercise his reasoning faculties on the act which he is about to do, the company is liable. And also the Court further instructed the jury, (page 111,) that if the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, and when his reasoning faculties are so impaired that he shall not be able to understand the *moral character*, or general nature, consequence and effect of the act he is about to commit, or when he is impelled thereto by an *insane impulse*, which he has not reasoning power to resist, such death is not in the contemplation of the parties to the contract, and the company is liable. The Court refused to add to the foregoing instruction, (as requested page 108,) the following: If George E. Pitkin killed himself in pursuance of a purpose to do so formed and entertained by him some hours or more previous to taking his own life and had at the time of killing himself sufficient of intelligence and vigor of mind to know that he was taking his own life and that he did so as a choice then and there made by him,

of death rather than to live and suffer the mortification, disappointments and adversities then and there besetting him, if any, then the said George E. Pitkin sufficiently appreciated the moral quality, and natural consequences of his act of self destruction to defeat a recovery in this action.

The object of the foregoing prayer was to light up the obscure part of the charge given by the Court. The Court told the jury that if Pitkin was impelled to destroy himself by an "*insane impulse*" a recovery could be had. What an *insane impulse* was the Court refused to define. The prayer of defendant declared, in effect, that if the reason of the deceased operated continuously during the whole period when he was contemplating suicide, and that he possessed sufficient mental vigor during all that period to choose and did choose death in preference to life, then there was no "*insane impulse*" in the case. In other words, that there could be no insane impulse, unless it be fed from some variety of insanity, which insanity must be shown by proof; and that where the paths of mental association remained unbroken, unobstructed sanity remained, and insane impulses impossible. In the case from which the charge given by the Court, was taken it was conceded, (15 Wallace, 581,) that there was evidence of the insanity of the deceased, the Court say, (page 589:) We have not before us the particular facts on which the question of the sanity of Terry was presented."

He may have realized the state supposed by the counsel in arguing Barradall *vs.* Hunter, viz: that his death might have resulted from an act committed under the influence of delirium, or that in a paroxysm of fever he might have precipitated himself from a window, or having been bled, he might have torn away the bandages;

whether he swallowed poison, or did the other insane acts, might result from the same condition of body or mind." * * * "If bodily disease in these or other forms overthrew Terry's reasoning faculties, in other words, destroyed his consciousness, his judgment, his volition, his will, he remained the form of the man only. The reflecting, responsible being, did not exist." Of this decision upon such testimony there can be no just complaint. In this case, however, all the testimony offered by plaintiff below is presented in this record, and no disease of any kind is shown. The jury were bewildered in this case with the acts of excitement, and the want of composure alone of the deceased while deliberating about his own destruction. Suicide lent its gloom to the conduct of Pitkin leading up to it. Many of the witnesses say they believe suicide imports insanity, and under the shadow of that belief they construed excitement, which culminated in suicide, to be evidence of insanity. In law, however, suicide alone furnishes no intimation, however feeble, of insanity. It is recognized by law that a person may take his own life in consequence of a *sane impulse*. Sane impulses and insane impulses have distinct origins. Disappointments, despair, violent emotions, caused by business troubles are conditions of a sound mind, and the energies and impulses which spring from them, are the energies and impulses of realities, and of sanity. While insane impulses are the forces of delirium, delusions, hallucinations, morbid images, and impaired intelligence, begot by hereditary taint, functional trouble or disease. To prove death by reason of "insane impulse" some variety of insanity in the subject must be established by evidence, and that that variety of insanity when established furnished the destroying impulse.

In this case there is no such proof. No hereditary taint of insanity is shown; no disease of the body; no mental malady, of long or short standing; in short none of the conditions which breed insanity, appear in the case. In the case above cited, Brown *vs.* Kennedy, 15 Wallace, 590, this court say, "The cases are to be carefully distinguished from those where persons in the possession of their reasoning faculties are impelled by passion merely."

In this case plaintiff showed that deceased, Pitkin, said he would kill himself because he had been disappointed concerning an appointment to an office. Plaintiff's evidence establishes, that there was an office, which Pitkin wanted, vacant; it shows that Pitkin applied for it to Mr. Merriman, the person authorized to bestow the appointment; that said Pitkin received a letter from Merriman which Pitkin said at the time of receiving it promised the office to Pitkin; that the office was afterwards given to another; that Pitkin believed that Prescott prevented him, Pitkin, from getting the office; that Pitkin was disappointed in not getting the office, and that he said he would kill himself for that reason. He did kill himself. All this is shown by plaintiff.

The law is that where there is plausible ground in the evidence, for believing that a person acted from prejudice or disappointment the theory of insanity will be excluded.

Barnes *v.* Barnes, 66 Maine, 298.

So in a case where the party acting believes that a certain state of facts exists, though in fact there is but slight grounds for the belief, a misapprehension of the facts will not be considered evidence of mental delusion.

Stockhouse *v.* Horton, 15 New Jersey Chancery Rep., 228.

A delusion consists in a person believing something to exist which does not exist, and he acts upon the belief.

Ray Med. Juris., § 128, Ed. 1860;
Com *v.* Rogers, 7 Met., 503;
1 Redfield on Wills, 67–68;
Bouv. Law Dictionary.

Madness is not indicated so much by any particular extravagence of thought or feeling as by a well marked *change of character*, or departure from the ordinary habits of thinking, feeling and acting, *without any adequate external cause*.

Ray Med. Juris., § 128, Ed. of 1860.

Dr. Gooch, in the London Quarterly Review, No. 42,-355, says: "It is the *prolonged* departure *without an adequate external cause*, from the state of feeling, modes of thinking, usual to the individual when in health, that is the true feature of disorder in mind."

In a case where it was alleged that deceased conceived a dislike to his only child, founded on an illusion, the court say no course of harsh treatment, no sudden bursts of violence, no display of unkind or even unnatural feeling, merely, can avail. It (the delusion) can only be proved by making out a case of antipathy, *clearly revolvable into mental perversion, and plainly evincing that the deceased was insane as to her*.

Drew *v.* Clark. 1 Addams, 282–4.

It must be shown by the testimony that deceased's conduct toward his child was founded in, and solely imputable to, morbid delusions or insanity.

3 Addams, 208.

And this state of mind cannot be made out by the *opinions* of expert or non-expert witnesses.

Stockhouse *v.* Horton, 15 New Jersey Ch., 208.

III.

There is not only no evidence in the case of the insanity of George E. Pitkin on the Sunday morning when he killed himself, but there is conclusive testimony to the contrary. On page 48 plaintiff's witness Harburg says he (Pitkin) turned round to give Mr. Doppler a certificate to empower him to install the officers in the lodge, as he could not and would not be present. On page 53 it will be seen plaintiff's witness Doppler says Pitkin wrote the power of attorney or authority for him, Doppler, to install the officers of the lodge. On page 98, that written authority is found, and is as follows:

"KANSAS CITY, *Sept.* 29, 1878.

"I hereby appoint Brother Philip Doppler, D. D. G. M., to act for me to install Lincoln Lodge, No. 123, for the year 1878.

"GEORGE E. PITKIN,
"*D. D. G. M., Dist.* 20."

In the case of O'Brien *vs.* People, 36 New York Rep., the court say: "But the case did not call for any instruction on the subject. There was no evidence of insanity or moral irresponsibility. * * * * * * * The evidence was clearly to the contrary. The letter he wrote, or dictated and sent to the deceased immediately prior to the affray, evidences the existence of memory, reason, will, and purpose, and consequent, moral, and intellectual power and responsibility.

"In this transaction the presence of intelligence and perfect coherence of thought in Pitkin is shown. If he had purchased a farm with the deliberation shown in his preparation to kill himself, no one would think of questioning the validity of the purchase. The law presumes one who commits suicide as sane as one who buys a farm;

and the same strength of proof of insanity is as necessary in the one case as the other. If a man was *said* to look wild while purchasing a farm, it would hardly prove his insanity, especially if it also appeared that he wrote the deed to the farm himself.

IV.

The court below erred in permitting plaintiff to introduce the following testimony:

Question, page 71. What impression did he make upon you by his manner and conduct at the time?

(Objected to as incompetent.)

Answer. I thought he was out of his head.

On page 65. Question. What impression did he make upon you from his conduct, actions, manner, expressions, and what he said?

(Objected to, on the ground no foundation had been laid.)

Answer, The impression left on my mind was that he was crazy, and did not know what he was doing.

On page 56. Question. Just state to the jury what impression was made upon you from what you saw as to Mr. Pitkin's condition?

(Objected to as incompetent.)

Answer. My impression was that he seemed to be quite out of his head that morning; I could not say the reason; I did'nt know anything about his disappointment; I found that out afterwards.

On page 48, witness, Harburg, was allowed to testify to what he (witness) said to a third person about Pitkin's condition, after seeing Pitkin. This was objected to as incompetent. The answer was "I made the remark to Doppler that Pitkin is not himself; George looks kind

of crazy. Well, Mr. Doppler made the remark, " he does, and that was the last I seen of poor George alive."

Will it be contended that the foregoing conversation between two persons about a third, is competent to prove the mental condition of that third person?

The testimony is of a character to impress the jury, especially so, after the court had, in the presence of the jury, declared it proper to be given. It rests on no facts. The witness does not even swear that he *entertained* the opinion which he expressed to the other person.

On page 53, it appears that witness, Doppler, also was, against appellant's objection, permitted by the court to testify to what he said to Harburg about Pitkin after Pitkin had gone away.

Question by plaintiff's counsel: I will ask you to state what was said, if anything, when Pitkin left, in regard to his appearance and condition.

(Objected to as incompetent.)

Answer. I made the remark to Harburg that in my opinion Pitkin is out of his head, kind of mad—insane. This conversation between Harburg and Doppler operated upon the jury as equivalent to the testimony of two witnesses that Pitkin was insane.

It cannot be shown that the conversation of two persons concerning the mental condition of a third is competent evidence to establish that condition, nor can this evidence be said to be free from injury to appellant, for it bore with distinct force upon the very point in dispute.

A witness cannot testify to what he said to others about the sanity or insanity of another.

Harrison *v.* Rowan, 3 Washington C. Ct., 580.

It will be seen that this witness did not even say at

the time he testified that he had an opinion about Pitkin's mental condition on the occasion he speaks of, giving the facts upon which such opinion rested, but merely that *he remarked to Mr. Harburg that he so thought.*

V.

Appellant insists that the so called opinions of the witness in this case, introduced by appellee in evidence, were and are, incompetent testimony, and that this case should be reversed for that reason.

The vice of allowing non-professional witnesses to give their opinions and impressions concerning the state of a person's mind had its origin in ecclesiastical courts where jury trials were unknown. The practice was never tolerated in the common law courts. In the case of Wright *v.* Tatham, 5 Cl. and Fin., 692, the history of such testimony is reviewed, and it is declared that at common law such testimony is incompetent. It is believed that this court has never passed upon this subject. The common law rule is upheld in Massachusetts by numerous decisions.

Com. *v.* Wilson, 1 Gray, 339;
Pool *v.* Richardson, 3 Mass., 330;
Com. *v.* Fairbanks, 2 Allen, 511;

So in Alabama.

McCreery *v.* Hooper, 12 Ala., 823.

Also in Maine.

Wyman *v.* Gould, 47 Maine, 159.

In New York a non-professional witness is not permitted to give his opinion on the general condition of a person's mind.

O'Brien *v.* Bache, 36 New York, 282.

A professional witness may be questioned concerning the extent and degree of unsoundness of mind of the patient, and some approximation to certainty may be preserved in the inquiry, but non-professional witnesses possess no special knowledge of the tests of insanity, and there are no means by which the value of their opinions can be measured.

If the facts upon which one bases his opinion support the opinion, then the jury will indulge the same opinion after hearing the facts from the witness. Expert testimony rests on the assumption that persons possessed of scientific knowledge or skill observe facts in connection with the subject, concerning which they possess that knowledge or skill which are excluded from the observation of witnesses not so informed, and therefore their opinions are in the nature of facts. The non-professional witness, however, possesses no qualifications to give an opinion. The writers favoring such opinions say that a non-professional witness must give the facts first and his opinion afterwards on the facts. If the facts which he first gives logically support the conclusion which is expressed in his opinion, then the jury would adopt the conclusion as well as the witness. If the facts do not support the opinion of the witness, why should the witness be allowed to supply the deficiency in the facts by expressing an opinion concerning the conclusion which he is willing to say he thinks the jury ought to reach in the controversy before them.

In this case the imponderable nature of non-professional opinions is well illustrated. The witness Doppler, on page 53, testifies as follows:

> Question. Have you stated all that occurred there?
> Answer. All that I can remember.

Question. Now, the conversation you had with Pitkin was about the installation of officers; was it?

Answer. Yes, sir.

Question. You did not talk personally with him about anything else?

Answer. No.

Question. All the conversation you had about that was what you stated and he told you, that he would not be there and he wanted to give you authority to install the officers?

Answer. Yes, sir.

Question. And he wrote that paper, signed it and gave it to you?

Answer. Yes, sir.

On page 54, witness says: Well, I only paid attention to it because he made the remark that he was going to a country where there was no return.

Page 55. Question. Did it make any impression on you?

Answer. I don't know that it made much impression on me only what I have said; I thought it was something strange.

Question. That is all you thought about it?

Answer. Yes, sir.

Do these facts justify the opinion that this witness says he expressed to Harburg after Pitkin left, that Pitkin was insane? If a man kill himself that is no *evidence of insanity*. If he says beforehand that he will kill himself, is that any more evidence than the act of suicide itself, of insanity? If not, does it justify an opinion that the person using the expression was crazy? If not, should not the jury be unaffected by the opinion of the witness: In nine cases out of ten the jury will accept the opinion of the

witness, if allowed to be given in evidence, as a substitute for proof of the fact itself. But it is said that there is something so subtle and difficult of description about the conduct and appearance of insane persons that an ordinary witness cannot fitly express it, and therefore such witness ought to be permitted to relate how he was impressed by that which he cannot describe. If he cannot describe the grounds of his opinion fully, he cannot be cross-examined concerning those grounds fully, and cannot be contradicted upon that part of the case which he cannot describe. Such a doctrine furnishes a refuge for an interested or prejudiced witness who is willing to lie. An expert witness must stand the closest analysis of his testimony, and may be required to give a reason to support his conclusions and statements. But a non-professional witness, who knows but little of insanity at best, and that little so ill that he cannot describe it, is allowed to close up the gap of the whole controversy by an opinion founded on facts as far as disclosed, barren of legal significance.

JEFF CHANDLER,
Att'y for ~~Appellant~~
Plaintiff in Error

111-625

OFFICE SUPREME COURT U.S.
FILED
OCT 20 1883

Supreme Court of the United States.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO.,
Plaintiff in Error,
vs.
HELEN PITKIN,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

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STATEMENT OF CASE.

Helen Pitkin in March 1879 brought suit in the Circuit Court of Jackson County, Missouri, against the Connecticut Mutual Life Insurance Co. upon two of its policies of insurance upon the life of her husband, George E. Pitkin, who died September 28, 1878; one an ordinary life policy for $5,000, issued August 1, 1866, in consideration of an annual premium to be paid; the other a paid up policy for $423, issued September 24, 1873, and insuring the life of the husband for eight years, and both for the sole use and benefit of the wife, Helen Pitkin.

A summons was issued directed to the Sheriff of the City of St. Louis, who made return that he executed the writ in the City

of St. Louis March 27, 1879, by delivering a copy thereof and of the petition "to A. B. Denton, the person authorized by the writ-"ten instrument or power of attorney of the Connecticut Mutual "Life Insurance Company, the defendant named within, duly "signed, sealed and filed with the Superintendent of the Insur-"ance Department of Missouri to receive service of process for "and in behalf of said Company in this State."

April 24, 1879, the Insurance Company specially appeared and filed a motion to quash the return, which motion was overruled April 25, and on the same day the defendant filed its petition and bond for removal, and the cause was removed to the Federal Court.

After it was docketed in that Court, the defendant filed an answer to the merits, admitting the issuing of the policies, the fact of death and proof of the same, but alleging breach of contract of insurance in this:

That after the issuing of the policies the insured became so far intemperate as to impair his health and to induce delirium tremens, and that he premeditatedly and deliberately shot himself.

Defendant also alleged that the insured, at the time of application for the Insurance, made false and untrue representations in this:

That to the question "Is the party now and has he always been of temperate habits," he answered "Yes."

The plaintiff replied to this answer by denying all of its allegations, except that the deceased died by his own hand, and by alleging that at the time of his death the deceased was insane, and was not responsible for his acts.

The material issues thus raised by the pleadings were:

First: Was George E. Pitkin insane and irresponsible for his acts at the time that he committed suicide? The burden of this issue was upon the plaintiff.

Second: Did he, after the issuing of the policies, become so far intemperate as to impair his health and produce delirium tremens?

Third: Did he falsely represent in his application that he was and always had been of temperate habits? The burden of the second and third issues was upon the defendant.

The action was tried to a jury, and resulted in a verdict for the plaintiff for the full amount claimed, upon which final judgment was entered against the defendant November 7, 1879, for $5,687.77, with costs.

In December 1879 this judgment was assigned to K. Coates, Trustee. (Page 20, Transcript of Record).

The defendant sued out a writ of error, and on October 7, 1880, the transcript of record was filed in this Court.

On December 6, 1882, Helen Pitkin, defendant in error, died.

The exceptions that appear in the record to rulings of the Court below, and upon which errors may possibly be assigned by the plaintiff in error, are as follows:

First: To the refusal of the State Court to grant the motion of the defendant to quash the return of service to the summons. (Pages 10, 17 and 29 of Record).

Second: To the refusal of the United States Circuit Court to grant the motion of the defendant to dismiss the action for want of jurisdiction. (Pages 16 and 31 of Record).

Third: To the refusal of the Court below to sustain the demurrer to evidence filed by defendant at the close of plaintiff's case. (Page 85 of Record).

Fourth: To the refusal of the Court below to give certain instructions to the jury as requested by the defendant. (Pages 106, 107 and 108 of Record).

ARGUMENT.

I.

There was no error in the refusal of the State Court to quash the return of the summons.

The plaintiff was a resident of Jackson County, where the suit was brought. The defendant was a foreign corporation, and a non-resident of the State.

The Circuit Court of Jackson County had jurisdiction of the subject matter, and, to acquire jurisdiction of the defendant, could issue its writ of summons to any County in the State.

"Suits instituted by summons shall, except as otherwise pro-"vided by law, be brought * * * fourth, when all the defend-"ants are non-residents of the State, suit may be brought in any "County." (Revised Statutes 1865, Chapter 163, Section 1, Page 653; 2 Wagner's Statutes, Page 1005, Section 1).

"And when any defendant or defendants are non-residents "of the State, the plaintiff may take his writ against him or them, "or separate writs against each, directed to the Sheriff of any "County in the State in which the plaintiff believes such defend- "ant or defendants may be temporarily found." (General Statutes 1865, Chapter 164, Section 12, Page 655; 2 Wagner's Stat., Page 1008, Section 12.

The Sheriff of the City of St. Louis had the legal right to serve the summons within the City of St. Louis, which was separated from the County of St. Louis under the provisions of the Constitution of 1875.

"All general laws relating and applicable to the Sheriffs, "Coroners and Marshals of the several Counties of the State "shall include all corresponding city offices named in the Charter "and scheme of separation for the government of the City and "County of St. Louis." (Laws of Missouri 1877, Page 187, Section 4).

The service of the summons, as appears by the return (page 10 of Record), was made upon the person appointed by the defendant for that purpose, in pursuance of the provisions of the law of 1869, Page 38, Section 31, as amended by the law of 1874, Page 78, Section 2, which reads as follows:

"No Company mentioned in the preceding section shall transact any such business as aforesaid by any agent or agents in this State, unless it shall first file with the Superintendent of the Insurance Department a written instrument, duly signed and sealed, authorizing some person, who shall be a citizen of this State, to acknowledge or receive service of process for and in behalf of such Company in this State, and consenting that service of process upon such agent or attorney shall be taken and held to be as valid as if served upon the Company, according to the laws of this or any other State, whether such process is issued by any of the Courts of this State or any of the Courts of the United States having jurisdiction within this State." * * *

There was no attempt to impeach the truth of the facts stated in the return.

But if this service had been absolutely void, or if no summons whatever had been issued, the defect would have been cured by the voluntary appearance of the defendant.

"Suits may be instituted in Courts of Record except when "the statute law of this State otherwise provides, either, first, "by filing in the office of the Clerk of the proper Court a petition "setting forth the plaintiff's cause of action and the remedy "sought, and by the voluntary appearance of the adverse party "thereto."

Gen. Stat. Mo., 1865, p. 654, sec. 1.
2 Wagner's Stat., p. 1006, sec. 1.

The defendant, after refusal of the State Court to grant the motion to quash the return, filed its petition and bond and prayed a removal to the Federal Court. (Pages 11, 12 of Record.)

It then appeared in the Federal Court and filed an answer to the merits. (Pages 13, 14 of Record.)

It then again appeared and filed a motion to dismiss for want of jurisdiction; *not appearing specially for the purpose of the motion, but generally.* (Page 16 of Record). It then appears at the trial, introduces testimony and submits the case upon the merits to the jury.

Fugate vs. Glasscock, 7 Mo., 577.
Ripstein vs. St. L. Mut. Life Ins. Co., 57 Mo., 86.
Fordyce vs. Hathorn, 57 Mo., 120.
Feedler vs. Schroeder, 59 Mo., 364.
Pry vs. H. & St. J. R. R. Co., 73 Mo., 124.
Jones vs. Andrews, 10 Wall., 327.

For the reasons above stated, the Court below committed no error in refusing to grant the motion to dismiss filed by the defendant after the removal to the Federal Court.

II.

The demurrer to evidence, filed by defendant at the close of plaintiff's case was properly overruled.

The issuing of the policies, the death, and the furnishing of the proper proofs were all admitted by the pleadings, leaving only the insanity of the deceased to be proven to make the case for the plaintiff. That there was testimony tending to show insanity introduced by the plaintiff, sufficient at least to warrant the submission of this question to the jury, there can be no doubt.

True, the witnesses were not professional experts, yet their testimony as to the appearance, conduct and actions of Mr. Pitkin during the last three or four days of his life, the contrast of this with his previous appearance and actions, and the impressions this made upon their minds, was perfectly competent.

The following extracts from the testimony will suffice to show that the case was properly submitted to the jury:

KERSEY COATES. (Page 37 of Record.)

Q. During the time you were President of the Company, you may state the character and efficiency of the services of Mr. Pitkin?

A. I regarded him as a very efficient man, indeed; very capable, very faithful and remarkably steady.

M. W. ST. CLAIR. (Pages 40 and 41 of the Record.)

A. I met him Saturday evening,

Q. About what time was it?

A. It was between six and seven o'clock. My wife and I went to market, and as we passed through the market-house, Pitkin passed by me and says, "How are you, Bill?" I said, "My name is not Bill." "Oh, no: excuse me," and he passed on on the north side of the market-house.

Q. How did he look at that time?

A. He was very much excited, and my wife asked me what what was the matter with George.

Q. Never mind that. I wish you to state more particularly as to the appearance of Mr. Pitkin; the expression of his face, eyes and countenance, if you observed anything about it.

A. The only time that I could judge of his appearance was at the time I had the talk with him on Saturday here at the corner.

Q. How was it then?

A. He had a very wild look on his face; his face was flushed red and he was excited. I told him he had better go home and think the matter over, and that he could rest assured that Mr. Prescott was his best friend. He said there was no use in talking that way to him; that there was no use of giving him any such advice as that; he knew better.

Q. What was his manner of speech?

A. Very hasty.

Q. How were his sentences; long or short?

A. Short.

MAGGIE SMITH. (Pages 43 and 44 of the Record.)

Q. State what happened during the night?

A. He came up stairs about half past nine or ten o'clock, and I went into the room to straighten things, and Mr. Pitkin rushed around the room as though something was the matter, and

I went into the room and asked him what was the matter, and he said, "Nothing." I went back then and heard him in the sitting-room mumbling to himself in a very low tone.

Q. What did he say?

A. I could not hear what he said.

Q. You could not distinguish the conversation?

A. I didn't hear anything until the next morning.

Q. What time did he get up the next morning?

A. About 4 o'clock.

Q. Was it then you heard him talking?

A. No, sir; not in the night.

Q. What time did he usually get up?

A. Usually about 8 o'clock on Sunday morning.

Q. What did he do when he got up Sunday morning?

A. He came and asked me for his clothes, and I went and took out his clothes and laid them on the bureau.

Q. What next occurred?

A. He came back and asked me for them, and I told him where he could find them; I told him I had laid them on the bureau, and then I went and gave them to him.

Q. What next?

A. I went down stairs to get breakfast.

Q. What time was that?

A. I don't know.

Q. Well, what did he do next?

A. He came rushing down after me and asked me to pump some water for a bath. I started the pump, but the water didn't seem to come, and I went to see what was the matter. He was standing looking out of the window, and I said, "Mr. Pitkin, I thought you wanted a bath?" and he said, "No, I don't," and rushed at me with a kind of foam on his mouth, and I rushed out of the door.

Q. Did you see him again that morning?

A. Yes, sir.

Q. When?

A. Just before breakfast time.

Q. What was he doing then?

A. Sitting on the porch.

Q. Did you have any conversation with him then?

A. I did not.

Q. Now, at the time you said you met him at the bath-room, how did he look?

A. He looked very wild and frightened out of his eyes. He looked like some one that was crazy.

Q. Now, after breakfast what occurred?

A. Well, when he was sitting at the breakfast-table I went to get him some warm waffles, and while I was gone he went up stairs; I then went up stairs to see what he was doing, and he was brushing his hat. I said, "Are you going to church?" and he said "Yes." Then I said, "It's very early to go to church; it is only half-past nine." Then he turned away, and I saw him no more.

Q. Did you see him leave the house?

A. No.

Q. What did he have on?

A. He had on an old coat which he wore during the week, and a pair of old pants. He didn't put on any clean clothes or take any bath.

Q. What was his usual habit?

A. To take a bath, wash himself, and put on other clothes.

MAGGIE SMITH, Cross-Examination (Page 46 of the Record.

Q. Now, you spoke about the expression of Mr. Pitkin's countenance, which you called a crazy look. What kind of a look was it?

A. He had blareing eyes, this way (illustrating.)

Q. That was the strange expression. He lifted the eyelids as you have done?

A. Well, he looked wild all the time.

ROBERT HARBURG. (Page 48 of the Record.)

Q. What did Mr. Pitkin say or do that morning?

A. He came in and said, "Harburg, I have to give you good-bye; I am going to a country where there is no return." I says, "George, what do you mean?" Well, he looked at me and says, "I mean what I say." He had a kind of a queer look about him, and, says I, "Are you going down South where the yellow fever is?" and he says, "No, I am going to a country where there is no return."

Q. How did he look?

A. He had a queer look; he had a kind of a wild look about him.

Q. What was his general appearance?

A. His general appearance was a very wild look — unusual to what his look had been before that.

Q. Had you ever noticed anything of that kind before that time?

A. I had not.

PHILIP DOPPLER. (Pages 52 and 53 of the Record.)

Q. How did he look?

A. Very excited, and red in the face. I noticed him particularly and looked at him, because his looks did not suit me very well; not as natural as he had before.

Q. Had you ever seen him look as on that morning?

A. No, sir.

Q. Was this authority to install the officers verbal or in writing?

A. In writing.

Q. Who wrote it?

A. Mr. Pitkin.

Q. State the manner of his writing.

A. I think from the manner ——

Q. State what occurred.

A. He was very excited when he wrote it.

Q. Did he write it with ink, or otherwise? How did he write it? Describe his manner.

A. He asked for a piece of paper from Harburg, and wrote it on the show-case, I believe. He was just excited, and made a mistake, and I called his attention to it and told him to make it different, and he did, in the number of the Lodge.

Q. He made a mistake in the number of the Lodge?

A. Yes, sir. I told him to rectify it, and he did so.

Q. What was said about that?

A. I made the remark that he ought to know the number of the Lodge well.

Q. What did he say in reply?

A. I don't think he said anything; if he did I don't recollect it.

Q. What is the number of your Lodge?

A. 173.

Q. What number did he give it?

A. I think 123.

Q. How long was that the number?

A. From its organization.

Q. How long is that?

A. I don't know; it must be before 1866.

Q. Was Mr. Pitkin ever connected with this Lodge?

A. In one sense he was. He was Deputy District Grand Master of our Lodge; and during the time he was a representative of our Lodge, too.

Q. Have you got the original authority that Pitkin gave you on that morning?

A. I have.

Q. Will you produce it?
A. Yes, sir. (Handing paper to counsel.)
Q. In whose handwriting is this?
A. Mr. Pitkin's.
Q. How long was Mr. Pitkin there, Mr. Doppler?
A. Probably ten or fifteen minutes.

PHILIP DOPPLER, Cross-Examination. (Page 54 of the Record.)

Q. Now, you have spoken of a wild look that he had?
A. Yes, sir.
Q. Just describe that look.
A. It is a hard thing to do.
Q. Do the best you can.
A. It is what everybody means by a wild look; and everybody knows pretty well what a wild look is. It is different from any other.
Q. In what respect?
A. His face was flushed, his eyes opened intensely wide; that is what I call a wild look. Most everybody understands what a wild look is.

A. C. STREIN. (Pages 55 and 56 of the Record.)

Q. Now state to the jury what passed between you and Mr. Pitkin that morning when he came into your place.
A. He asked for a glass of wine, and I gave it to him. He said he hadn't had a drink yet that day, or since the one he had last night from me. That was a glass of wine. He said: "I may look queer this morning or drunk to other people, but I ain't drunk." He said: "Some people might think me drunk, but I am not; I am not drunk in my body but I am in my mind."
Q. How did he look?
A. He looked unusual to me.
Q. Describe fully his appearance.
A. He had on his old clothes and his neck-tie was out of shape; his face was red, and his eyes staring at me, which made me think he was quite out of his usual way.
Q. Have you stated all that occurred? If not, state fully everything that occurred from the time he come in until he went out.
A. I have stated all that I recollect at the present time.
Q. How did his appearance and the look that you have described compare with his usual appearance prior to that time?
A. Quite different.

Q. In what respects?

A. He looked in his face quite red, and his eyes had quite another expression.

Q. What sort of an expression?

A. He had them open wide, with a look that was wild, and he looked around the room awhile and walked up and down and seemed very restless. He would not stand at one place like he usually did but walked up and down. I spoke a few words after that, but I did not notice him very much, for I was very busy.

Q. Mr. Strein, state whether or not from his looks, actions, and manner, and also what he said, you regarded him at the time as in his right mind.

Q. Just state to the jury what impression was made upon you from what you saw as to Mr. Pitkin's condition.

A. My impression was that he seemed to be quite out of his head that morning. I could not say the reason. I didn't know then anything about his disappointment; I found that out afterwards.

GEORGE GASTON. (Pages 59 and 60 of the Record.)

Q. Now, I wish you to go on and state to the jury in your own way exactly what passed between you and Mr. Pitkin on that Sunday morning when he came into your place.

A. About 11 o'clock, I think that was the time, I was waiting on some persons (some customers of mine) when Mr. Pitkin came in by himself. He waited until I got through and then he says to me: "You are working very hard, ain't you?" and I says yes. And then he says, "It is no use working hard in this world; we are all working down into the ground and I am going to-day." I did not pay much attention to that, but asked him what he wanted, and he said "a glass of wine." I gave him the glass of wine, and he said to me, "that his children were robbed and that he could not live now, and that he intended to take two lives that day." That alarmed me a little; and I asked him what he meant, and he said that he intended to kill Mr. Prescott and himself; that Mr. Prescott was to blame that he did not get the place that he expected to. I told him that was very unwise, and that if he should kill Mr. Prescott and himself, he would be doing a very foolish thing, and that it would be a frightful stain upon his children; and I said to him "If your children should pass his children when you are dead and gone and they should point to your children and say, there goes the children of the man who murdered my father, it would be a horrible thing." He put his hand on his forehead in this way (rubbing his forehead briskly with the right hand), and

Q. Will you produce it?

A. Yes, sir. (Handing paper to counsel.)

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Q. Describe fully his appearance.

A. He had on his old clothes and his neck-tie was out of shape; his face was red, and his eyes staring at me, which made me think he was quite out of his usual way.

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says, "good-bye, I am going to kill myself," and he went out of the room.

Q. How did he look?

A. He looked very excited and wild.

Q. How was the expression of his eyes?

A. It seemed to me that the gentleman was in an abnormal condition.

Q. Explain to the gentlemen of the jury what his condition and actions were.

A. His conduct was that of a man whose faculties were paralyzed with grief or something which I could not explain; but the way he went out he seemed in a very depressed condition.

Q. Now, from what he said and did while in your place, I will get you to state to the jury what impression was made upon your mind.

Q. What impression was made upon you in his conduct, actions and talk while in your place on that day?

A. Well, it alarmed me, as he was a member of my lodge, and I thought he was in an abnormal condition. It seemed to me that he was in an abnormal condition, and that he did not know what he was doing.

W. J. FERREY. (Pages 65 and 66 of the Record.)

Q. What occurred? State it fully to the jury.

A. I came down Broadway, walking, and Mr. Pratt came down from his residence on Washington street, in a street car, and got out on the corner of Sixth and Broadway, and we went there in front of the office. Mr. Pitkin was standing very near the door, and as we passed up the stairway going to our office we both said, "good morning" to him, and Mr. Pratt says, "Pit., why ain't you at chuch?" Mr. Pitkin said, "I am not going to church, I am going to hell;" and we immediately passed on up stairs and into the doorway, but as we started up stairs Pitkin stuck his head into the door and says, "Do you want to send any word to him?" Mr. Pratt says, "To whom?" "To the devil. I am going to hell," and he turned immediately and went out of the door.

Q. How did he look during this conversation?

A. Well, he seemed very much agitated and nervous; his face was flushed; the pupil of his eye dilated and bright, and there was no expression in it, it seemed to me.

Q. What impression did he make upon you from his conduct, actions, manner, expressions, and what he said?

A. The impression left on my mind was that he was crazy, and didn't know what he was doing.

W. J. FERRY. Cross-Examination. (Page 66 of the Record.)

Q. Did you have any impression at the time as to his condition, or did you form that afterwards?

A. I expressed it, as I went up stairs, to Mr. Pratt.

Q. You gave expression to it then?

A. Mr. Pratt and I both.

Q. I am not asking you as to Mr. Pratt, but what your own opinion was.

A. Well, I said to Mr. Pratt, as we went up stairs, "The old man is crazy, isn't he?"

J. H. ALDRICH. (Page 71 of the Record.)

Q. As Pitkin passed out of the door of Prescott's private office, did you notice him?

A. No, sir.

Q. Did you observe anything with regard to him, as to how he looked?

A. I thought he looked strange when he first came in.

Q. Explain fully to the jury what you mean. Describe how he looked.

A. I thought he had a very peculiar look, a look I had never seen before.

Q. What sort of a look?

A. A wild look.

Q. What impression did he make upon you by his manner and conduct at the time?

A. I thought he was out of his head.

CHARLES J. SMITH. (Page 75 of the Record.)

Q. When he came out of Mr. Prescott's office, what was the expression of his face and eyes?

A. He had an excited appearance; his face was white and red in spots, showing congestion, and his general appearance as if he had had no sleep. He was laboring under intense excitement, and he had a wild look and manner, like one who is not under the control of his reason.

C. H. PRESCOTT. (Page 80 of the Record.)

Q. Go on.

A. On this morning he was somewhat violent. I had never seen him look as he did that morning, and it made me apprehensive of danger, so much so that I stood right up and tried to reason with him; but reasoning was out of the question; and he

said, (of course I cannot remember all the conversation), but he said, "It makes no difference now; I shall be a dead man before I leave the building, and you ought to be." When he said that, and from his strange appearance I thought he had taken some poisonous substance that would kill him, and I really expected it for the moment, he looked so terribly shocking. As soon as I got an opportunity I went by him and opened the door, and the moment I did that he rushed out, and before I had a chance to speak to anyone the shot was fired. We rushed out then and he was dead on the floor.

Q. Now state particularly to the jury what his appearance was, how he looked.

A. Well, he looked just as I suppose a crazy man would look; I don't remember ever seeing a crazy man; but if you should ask me about it I would say he looked just as I suppose a crazy man would look.

Q. Go on.

A. Well, I am not acquainted with crazy people; I am only giving you my idea.

Q. How was his countenance, his cheeks and face?

A. Well, I have unforfunately a disease of the eyes, and I cannot give you the expression of his countenance other than it was changed from the natural way; there was a decided change.

Q. How were his eyes?

A. They looked entirely unnatural. I could not tell you what they looked like; they looked like cat's-eyes—glaring.

A. What peculiar position did he assume, if any?

A. His hands were held in that way (illustrating); I remember that particularly, because I thought he was going to jump at me, and it went through my mind that if he did jump I should jump first, as he was a much stronger man than myself. I didn't dare show him that I was the least bit timid, and I don't think I did; but I was for all that.

C. H. PRESCOTT, Cross-Examination. (Pages 83 and 84 of the Record.)

Q. Now, you have described Mr. Pitkin's look as being like what you suppose a crazy man's look would be, though you have never seen a crazy man, you say?

A. I don't know how a crazy man may have looked.

Q. Well, how do you raise up the image before you of a crazy man's face, the counterpart of which you have never seen?

A. Simply from the reason that I had never seen him look that way during the whole time that I had known him.

Q. But I want to know how your mind operates in that sort of way so as to improvise a crazy face, the counterpart of which you have never seen, and then compare Pitkin's with it?

A. Well, I took his face in the light of his actions.

Q. His actions?

A. Certainly.

Q. What were they?

A. It seemed to me something out of the regular order of things.

Q. Isn't the picture a little stretched?

A. I don't think so.

Q. Now, you say you imagine how a crazy man would look, and you have fortified that image with a crazy face well defined; what is it?

A. Well, just as Pitkin looked.

Q. But we don't see that.

A. Well, my power of description is not good.

Q. You have already set up the ideal of a crazy face. It seems to me that your power at description is pretty good, if you can bring that up in the mind and make it a standard of comparison. Now, what looks do you assign to a person whom you suppose to be crazy?

A. Well, I don't know the medical terms.

Q. Well, we will take the everyday terms.

A. Well, I should say that if a man accustomed to cheerfulness and geniality became violent in his actions and his looks change, there is something the matter with him; he is not the same. But I am guessing that he is crazy; I don't know that he is.

Insurance Co. vs. Terry, 15 Wall., 580.
Insurance Co. vs. Rodel, 95 U. S., 232.

III.

To the charge of the Court to the jury no exception whatever was taken at the time by the defendant. (Pages 108-9-10-11 of Record.)

At the close of the testimony, the defendant submitted to the Court five written instructions which it requested to be given to the jury. How many and which of these were given, or refused, the record does not disclose. These five instructions appear in the transcript on pages 106-7-8. From the notes of the Circuit Clerk, on page 108, it appears that at the time the bill of ex-

point was clear and overwhelming at the trial, and, under instructions upon the law of insanity in the very language expressly approved by this Court, the jury so found. That verdict settled the question of insanity. As we have shown, there is no error in the record, and scarcely any valid exception. Over three and a half years have elapsed since the writ of error was sued out, and execution of the judgment by the Court below stayed.

We submit to the Court that the imposition of 10 per cent. damages, in addition to interest, should be awarded upon the amount of the judgment.

WALLACE PRATT and
GARDINER LATHROP,
Counsel for Defendant in Error.

111-624

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1258.

W. L. ROBB, PLAINTIFF IN ERROR,

vs.

P. CONNOLLY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED FEBRUARY 19, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

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1 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the justices of the supreme court of the State of California, Greeting:

Because, in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said supreme court, before you, between W. L. Robb, the plaintiff in error, and P. Connolly, the defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said United States Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11th day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of the independence of the United States the one hundred and eighth.

[SEAL.] L. S. B. SAWYER,
Clerk of the Circuit Court of the United States,
Ninth Circuit, District of California.

The above writ of error is hereby allowed.

R. F. MORRISON,
Chief Justice of the Supreme Court of the State of California.

2 *The Answer of the Judges of the Supreme Court of the State of California.*

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the Supreme Court of the United States, within mentioned, at the day and place within, contained in a certain schedule to this writ annexed, as within we are commanded.

By the court.

[SEAL.] A. W. McCARTHY, *Clerk.*

Endorsed: United States Supreme Court. W. L. Robb, pl'ff in error, *vs.* P. Connolly, def't in error. Writ of error. Filed Feb. 8th, 1884. A. W. McCarthy, clerk.

3 UNITED STATES OF AMERICA, *ss*:

To P. Connolly, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Wash-

ington, in the District of Columbia, on the second Monday
October, A. D. 1884, pursuant to a writ of error filed in the clerk
office of the supreme court of the State of California, wherein W
L. Robb is plaintiff in error and you are defendant in error, to sho
cause, if any there be, why the judgment in the said writ of err
mentioned should not be corrected, and speedy justice should not b
done to the parties in that behalf.

Witness the honorable Robert F. Morrison, chief justice of th
supreme court of the State of California, this 11th day of Januar
A. D. 1884, and of the independence of the United States the 108t

[SEAL.] R. F. MORRISON, *Chief Justice.*

4 Service upon me of the within citation, this 4th day
February, A. D. 1884, at the city and county of San Francisc
is hereby admitted.

PATRICK CONNOLLY,
Sheriff of the City and County of San Francisco,
the Defendant in Error.

Service upon me of the within citatation, this 5th day of Febr
ary, 1884, at the city and county of San Francisco, is hereby ac
mitted.

J. D. SULLIVAN,
District Attorney, City and County of San Francisco.

Service upon the attorney general of the State of California i
hereby admitted, February 6, 1884.

E. C. MARSHALL, *Att'y Gen'l.*

Endorsed: United States Supreme Court. W. L. Robb, pl'ff i
error, *vs.* P. Connolly, def't in error. Citation. Filed Feb. 8th, 188
A. W. McCarthy, clerk.

5 *Petition for Writ.*

In the Supreme Court of the State of California.

In the matter of the application of W. S. ROBB for a writ o
habeas corpus.

To the Hon. R. F. Morrison, chief justice of the State of California

The petition of W. S. Robb respectfully shows: That he is unlaw
fully imprisoned, detained, confined, and restrained of his liberty
by P. Connolly, sheriff of the city and county of San Francisco, a
the old City Hall, in the city and county of San Francisco, in th
State of California.

That the said imprisonment, detention, confinement, and restrain
are illegal; and that the illegality thereof consists in this, to wit
That petitioner is the duly appointed agent of the State of Oregon
to receive and convey to said State one C. H. Bailey, a fugutive from
justice from said State, and having said Bailey in his custody unde
a warrant of arrest, a copy of which is hereto annexed and made a
part of this petition, he was on the 21st day of November, 1883
served with a writ of habeas corpus issued from the superior court

of San Francisco, dep't 1, commanding him to produce said Bailey in said court.

That petitioner made a return to the said writ annexing thereto a copy of said warrant, and respectfully refused to produce said prisoner, C. H. Bailey, on the ground that said C. H. Bailey was in custody of petitioner under and by virtue of the authority of the United States, and that said superior court had no jurisdiction to proceed in the premises.

Whereupon said court committed petitioner to the custody of said P. Connolly, sheriff aforesaid, until he should produce said C. H. Bailey. Petitioner alleges that his imprisonment is contrary the laws of the United States, and in excess of the jurisdiction of said court.

Wherefore your petitioner prays that a writ of habeas corpus may be granted, directed to the said P. Connolly, commanding him to have the body of petitioner before your honor, at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of his detention and said writ, and that he may be restored to his liberty.

W. S. ROBB.

Dated Nov. 22, 1883.

6 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

W. S. Robb, being duly sworn, says that he is the petitioner named in the foregoing petittion; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

W. S. ROBB.

Subscribed and sworn to before me, the 22d day of Nov., 1883.
D. C. VAN NOSTRAND, *Dep. County Clerk.*

Endorsed: No. 10915. Supreme court of California. In the matter of the application of W. S. Robb for a writ of habeas corpus. Petition for writ. Filed Nov. 22d, 1883. J. W. McCarthy, clerk. By Frank Myers, deputy clerk. Alfred Clark, atorney for petitioner.

7 State of California, Executive Department.

The people of the State of California to any sheriff, constable, marshal, or policeman of this State, Greeting:

Whereas it has been represented to me by the Governor of the State of Oregon that C. H. Bayley stands charged with the crime of embezzlement, committed in the county of Clatsop, in said State, and that he has fled from the justice of that State and has taken refuge in the State of California; and the said Governor of the State of Oregon having, in pursuance of the Constitution and Laws of the United States, demanded of me that I shall cause the said C. H. Bayley to be arrested and delivered to W. L. Robb, who is author-

ized to receive him into his custody and convey him back to the said State of Oregon.

And whereas the said representation and demand is accompanied by a certified copy of the information filed [in] the office of the justice of the peace of the precinct of Astoria, Clatsop county, State of Oregon, whereby the said C. H. Bayley stands charged with said crime and with having fled from said State and taken refuge in the State of California, which is certified by the Governor of the State of Oregon to be authentic.

You are therefore required to arrest and secure the said C. H. Bayley wherever he may be found within this State, and to deliver him into the custody of the said W. L. Robb, to be taken back to the State from which he fled, pursuant to the said requisition, he, the said W. S. Robb, defraying all costs and expenses incurred in the arrest and securing of said fugitive. You will make return to this department of the manner in which this warrant has been executed.

In witness whereof, I have hereunto set my hand and caused the great seal of the State to be affixed, this, the twentieth day of November, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.]

GEORGE STONEMAN,
Governor of the State of California.
By A. E. SHATTUCK, *Deputy.*

By the Governor:
THOS. L. THOMPSON, *Secretary of State.*

8 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

I hereby certify that I have this day arrested the within-named C. H. Bayley and delivered him to W. L. Robb, as herein commanded.

P. CROWLEY, *Chief of Police.*

November 20th, 1883.

9 *Order Granting Writ.*

In the Supreme Court of the State of California.

In the matter of the application of W. L. ROBB for a *writ of habeas corpus.*

Upon reading and filing the petition of W. L. Robb, duly signed and verified by him, whereby it appears that he is illegally imprisioned and restrained of his liberty by P. Connolly, sheriff of the city and county of San Francisco, at the old City Hall, in the city and county of San Francisco, in the State of California, and stating wherein the alleged illegality consists, from which it appear to me that a writ of *habeas corpus* ought to issue. It is ordered that a writ of *habeas corpus* issue out of and under the seal of the supreme court of the State of California, directed to the said P. Connolly, commanding him to have the body of the said W. L. Robb before department 2, in the court-room of the said court, No. —— Stockton street, San

Francisco, on the 24th day of November, 1883, at 10:30 o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said W. L. Robb, together with the time and cause of his detention, and that he have then and there the said writ.

Dated Nov., 1883.

R. F. MORRISON,
Chief Justice of California.

10 Endorsed: No. 10,915. Supreme court. In the matter of the application of W. L. Robb for a writ of *habeas corpus.* Order granting writ. Filed Nov. 22d, 1883. J. W. McCarthy, clerk. By Frank Myers, deputy clerk.

11 In Supreme Court.

Ex parte W. L. ROBB on *habeas corpus.*

The dist. att'y of the C. and C. of San Francisco, will please take notice that the above-entitled writ is returnable at ½ past 10 a. m., Nov. 24th, 1883, before dept. 2 of supreme court, No. —— Stockton st., in said city and county.

Resp'y, ALFRED CLARKE,
Att'y for Pet'r.

Nov. 22, 1883.

12 Endorsed: No. 10,915. In supreme court. *Ex parte* W. L. Robb on *habeas corpus.* Notice to dist. att'y. Due service of within hereby admitted this 22d day of Nov., 1883. J. D. Sullivan, dist. att'y.

13 *Habeas Corpus.*

STATE OF CALIFORNIA, } ss:
County of San Francisco, }

In the Supreme Court of the State of California.

The people of the State of California, to Patrick Connolly, sheriff of the city and county of San Francisco, Greeting:

We command you that you have the body of W. L. Robb, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said W. L. Robb shall be called or charged, before the Hon. the supreme court of the State of California, department thereof, at the court-room of said court, in the city and county of San Francisco, on the 24th day of November, A. D. 1883, at 10:30 o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said W. L. Robb. And have you then and there this writ.

By order of Robert F. Morrison, chief justice.

Witness the Hon. Robert F. Morrison, chief justice of the supreme court aforesaid, with the seal thereof hereunto affixed, this 22d day of November, A. D. 1883.

Attest:

[SEAL.] J. W. McCARTHY, *Clerk.*
By FRANK MYERS, *Deputy Clerk.*

14 STATE OF CALIFORNIA, *City and County of San Francisco:*

Due service of the original writ, of which this is a copy, hereby admitted, this 22d day of Nov., 1883.

PATRICK CONNOLLY, *Sheriff.*

Now comes P. Connolly, who makes this his return of the within writ, and shows that he holds the within-named W. L. Robb by virtue of a commitment, a copy of which is hereto annexed and made a part hereof.

PATRICK CONNOLLY, *Sheriff.*
By M. F. CUMMINGS, *Under Sheriff.*

San Francisco, Nov., 1883.

Endorsed: No. 10,915. Supreme court of California. *Ex parte* W. L. Robb, on *habeas corpus.* Writ of *habeas corpus.* Filed Nov. 23, 1883. J. W. McCarthy, clerk, by Frank Myers, dep'ty.

15 In the Superior Court of the City and County of San Francisco, State of California, Department No. 1.

WEDNESDAY, *November the* 21*st*, *A. D.* 1883.

Present, Hon. T. K. Wilson, judge.

In the matter of the application of Charles H. Bailey for a writ of *habeas corpus.*

The application of Charles H. Bailey for a writ of *habeas corpus* coming on regularly to be heard, and it appearing to my satisfaction that a writ of *habeas corpus* was duly and regularly issued, directed to and served upon one W. L. Robb, commanding him, the said W. L. Robb, to have and produce before me, the undersigned, one of the judges of the superior court of the city and county of San Francisco, at the court-room of department No. one of said court,
16 at the hour of half-past one o'clock p. m. of said day, the body of Charles H. Bayley, and at the time and place last aforesaid, the said W. L. Robb appearing by his counsel and submitting his return to said writ, from which it appears that the said W. L. Robb holds the said Charles H. Bayley under the authority of the United States and by virtue of the following warrant:

17 State of California, Executive Department.

The people of the State of California to any sheriff, constable, marshal, or policeman of this State, Greeting:

Whereas, it has been represented to me by the Governor of the State of Oregon that C. H. Bayley stands charged with the crime of embezzlement, committed in the county of Clatsop, in said State, and that he has fled from the justice of that State, and ha[s] taken refuge in the State of California: and the said Governor of the State of Oregon having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said C. H. Bayley to be arrested and delivered to W. L. Robb, who is authorized to receive him into his custody and convey him back to the said State of Oregon.

And, whereas, the said representation and demand is accompanied

by a certified copy of the information filed [in] the office of the justice of the peace of the precinct of Astoria, Clatsop county, State of Oregon, whereby the said C. H. Bailey stands charged with said crime, and with having fled from said State and taken refuge in the State of California, which is certified by the Governor of the State of Oregon to be authentic.

You are, therefore, required to arrest and secure the said C. H. Bayley, wherever he may be found within this State, and to deliver [him] into the custody of the said W. L. Robb, to be taken back to the State from which [he] fled, pursuant to the said requisition, he, the said W. L. Robb, defraying all costs and expenses incurred in the arrest and securing of said fugitive. You will make return to this department of the manner in which this warrant has been executed.

In witness whereof, I have hereunto set my hand and caused the great seal of the State to be affixed, this the twentieth day of November, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.]

GEORGE STONEMAN,
Governor of the State of California.
By A. E. SHATTUCK, *Deputy.*

By the Governor:

THOS. L. THOMPSON,
Secretary of State.

18 STATE OF CALIFORNIA, } *ss:*
City and County of San Francisco, }

I hereby certify that I have this day arrested the within-named C. H. Bailey, and delivered him to W. L. Robb, as herein commanded.

P. CROWLEY,
NOVEMBER 20TH, 1883. *Chief of Police.*

19 And the said W. L. Robb has in his custody and possession the body of the said Charles H. Bayley, and is able to and can produce the said Charles H. Bayley before me at the time and place specified in and in accordance with the directions contained in said writ, and further appearing that the said W. L. Robb wilfully neglects and refuses to obey said writ of *habeas corpus*, or to have or produce the said Charles H. Bayley before the undersigned, as above mentioned, and that no good or sufficient cause has been shown or exists for said refusal.

It is therefore ordered and adjudged that the said W. L. Robb is guilty of contempt of this court in refusing to obey said writ of *habeas corpus*, and refusing to have and produce the body of the said Charles H. Bayley before me at the time and place specified in
20 said writ; and further ordered that the sheriff of the city and county of San Francisco do forthwith arrest the said W. L. Robb and confine him in the county jail of the city and county aforesaid until he, the said W. L. Robb, obeys said writ and pro-

duces the body of the said Charles H. Bayley before me, or until he be otherwise legally discharged.

Given under my hand this 21st day of November, 1883.

T. K. WILSON,
Judge of the Superior Court of the City and County of San Francisco, Cal.

Endorsed: In the matter of the application of Charles H. Bayley for a writ of *habeas corpus*. Order of arrest of W. L. Robb. Filed Nov. 21, 1883. William T. Sesnon, clerk, by D. C. Van Nostrand, deputy clerk.

21 *Petition for Writ.*

In the Superior Court of the City and County of San Francisco, State of California.

In the matter of the application of CHARLES H. BAYLEY for a writ of *habeas corpus*.

To the Hon. T. K. Wilson, judge of the superior court of the city and county of San Francisco, State of California:

The petition of Charles H. Bayley respectfully shows:

That he is unlawfully imprisoned, detained, confined, and restrained of his liberty by W. L. Robb, at the old City Hall, in the city and county of San Francisco, in the State of California.

That the said imprisonment, detention, confinement, and restraint are illegal, and that the illegality thereof consists in this, to wit, that petitioner is held under a warrant of arrest, a copy of which is hereto annexed and made a part hereof.

That said warrant is issued without authority of law and against the law in this; that the provisions of the act of Congress have not been complied with in this; that no copy of an indictment found, or affidavit made before a magistrate, charging petitioner with any crime, has been produced to the Governor of California.

Wherefore, your petitioner prays that a writ of *habeas corpus* may be granted, directed to the said W. L. Robb, commanding him to have the body of petitioner before your honor, at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of his detention, and said writ, and that he may be restored to his liberty.

CHARLES H. BAYLEY.

Dated Nov. 21, 1883.

22 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Charles H. Bayley, being duly sworn, says that he is the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

CHARLES H. BAYLEY.

Subscribed and sworn to before me, this 21st day of November, 1883.

D. C. VAN NOSTRAND,
Deputy County Clerk.

Endorsed: Superior court, city and county of San Francisco. In the matter of the application of Charles H. Bayley for a writ of *habeas corpus*. Petition for writ. Filed November 21, 1883. William T. Sesnon, clerk. By D. C. Van Nostrand, deputy clerk. Frank O'Connor, attorney for petitioner.

23 State of California, Executive Department.

The people of the State of California to any sheriff, constable, marshal, or policeman of this State, Greeting:

Whereas it has been represented to me by the Governor of the State of Oregon that C. H. Bayley stands charged with the crime of embezzlement, committed in the county of Clatsop, in said State, and that he has fled from the justice of that State and has taken refuge in the State of California; and the said Governor of the State of Oregon having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said C. H. Bayley to be arrested and delivered to W. L. Robb, who is authorized to receive him into his custody and convey him back to the said State of Oregon.

And whereas the said representation and demand is accompanied by a certified copy of the information filed, the office of the justice of the peace of the precinct of Astoria, Clatsop county, State of Oregon, whereby the said C. H. Bayley stands charged with said crime, and with having fled from said State and taken refuge in the State of California, which is certified by the Governor of the State of Oregon to be authentic.

You are therefore required to arrest and secure the said C. H. Bayley wherever he may be found within this State, and to deliver him into the custody of the said W. L. Robb, to be taken back to the State from which he fled, pursuant to the said requisition, he, the said W. L. Robb, defraying all costs and expenses incurred in the arrest and securing of said fugitive. You will make return to this department of the manner in which this warrant has been executed.

In witness whereof, I have hereunto set my hand and caused the great seal of the State to be affixed, this, the twentieth day of November, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.]

GEORGE STONEMAN,
Governor of the State of California.
By A. E. SHATTUCK, *Deputy.*

By the Governor:
THOS. L. THOMPSON, *Secretary of State.*

24 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

I hereby certify that I have this day arrested the within-named

C. H. Bayley and delivered him to W. L. Robb, as herein commanded.

P. CROWLEY, *Chief of Police.*

November 20th, 1883.

25 In the Superior Court of the City and County of San Francisco, State of California.

The people of State of California to W. L. Robb, Greeting:

We command you that you have the body of Charles H. Bayley, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Charles H. Bayley shall be called or charged, before T. K. Wilson, judge of the superior court in and for the city and county of San Francisco, State of California, at the court-room of said court, and in the city and county of San Francisco, on the 21st day of November, 1883, at 1½ o'clock in the afternoon of that day, to do and receive what shall then and there be considered concerning the the said Charles H. Bayley. And have you then and there this writ.

Witness, Hon. T. K. Wilson, judge of the said superior court, at the court-room thereof, in the city and county of San Francisco, this 21st day of November, 1883.

Attest, my hand and the seal of said court the day and year last-above written.

WILLIAM T. SESNON, *Clerk.*
By D. C. VAN NOSTRAND, *Deputy Clerk.*

26 Endorsed: No. ——. Superior court, city and county of San Francisco. In the matter of the application of Charles H. Bayley for a writ of *habeas corpus.* Writ of *habeas corpus.* Filed Nov. 21st, 1883. William T. Sesnon, clerk, by D. C. Van Nostrand, deputy clerk. Frank O'Connor, attorney for petitioner.

27 In the Superior Court of the City and County of San Francisco, State of California.

Ex parte CHARLES H. BAYLEY. *Habeas Corpus.*

Now comes W. L. Robb, and makes this, his return, to the annexed writ, and shows that he holds the within-named prisoner under the authority of the United States, as will more fully appear on inspection of the warrant of the Governor of California, and a commission from the Governor of Oregon, a copy of which is hereto annexed and made a part hereof, and the originals produced.

Respondent respectfully refuses to produce said C. H. Bayley, on the ground that under the laws of the United States he ought not to produce said prisoner, because the Hon. superior court has no power or authority to proceed further in the premises.

W. L. ROBB.

28 Subscribed and sworn to before me, this 21st day of November, 1883.

J. F. CARPENTER,
Deputy County Clerk.

29 STATE OF CALIFORNIA, *Executive Department.*

The people of the State of California to any sheriff, constable, marshal, or policeman of this State, Greeting:

Whereas it has been represented to me by the Governor of the State of Oregon that C. H. Bayley stands charged with the crime of embezzlement, committed in the county of Clatsop, in said State, and that he has fled from the justice of that State, and has taken refuge in the State of California; and the said Governor of the State of Oregon having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said C. H. Bayley to be arrested and delivered to W. L. Robb, who is authorized to receive him into his custody and convey him back to the said State of Oregon.

And whereas the said representation and demand is accompanied by a certified copy of the information filed in the office of the justice of the peace of the precinct of Astoria, Clatsop county, State of Oregon, whereby the said C. H. Bayley stands charged with said crime, and with having fled from said State and taken refuge in the State of California, which is certified by the Governor of the State of Oregon to be authentic;

You are, therefore, required to arrest and secure the said C. H. Bayley, wherever he may be found within this State, and to deliver him into the custody of the said W. L. Robb, to be taken back to the State from which —— fled, pursuant to the said requisition, he, the said W. L. Robb, defraying all costs and expenses incurred in the arrest and securing of said fugitive. You will make return to this department of the manner in which this warrant has been executed.

In witness whereof I have hereunto set my hand and caused the great seal of the State to be affixed, this, the twentieth day of November, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.]

GEORGE STONEMAN,
Governor of the State of California,
By A. E. SHATTUCK, *Deputy.*

By the Governor:
THOS. L. THOMPSON,
Secretary of State.

30 I hereby certify that I have this day arrested the within-named C. H. Bayley, and delivered him to W. L. Robb, as herein commanded.

P. CROWLEY, *Chief of Police.*

Nov. 20, '83.

31 STATE OF OREGON, *Executive Department.*

To whom these presents shall come:

Know ye that I have authorized and empowered, and by these presents do authorize and empower, *Walter L. Robb* to take and receive from the proper authorities of the State of California, one *C. H.*

Bailey, fugitive from justice, and convey him to the State of Oregon, there to be dealt with according to law.

In witness whereof I have hereunto set my hand and affixed the great seal of the State, at the city of Salem, this 15th day of November, in the year of our Lord one thousand eight hundred and eighty-three.

Z. Z. MOODY,
Governor of the State of Oregon.

By the Governor:
R. P. EARHART,
Secretary of State.

Extracts from Minutes.

32 In the Supreme Court of the State of California. In Bank. Nov. 24th, 1883.

Ex parte W. L. ROBB } No. 10915.
On HABEAS CORPUS. }

Argued by Clarke, for petitioner, and Fitz Maurice, for respondent, and petitioner allowed 15 days to file brief; respondent 10 days to reply, and petitioner 5 days to reply thereto. Cause to be thereupon submitted.

33 *Supreme Court Decision.*

IN BANK.

[Filed January 10, 1884.]

IN RE W. L. ROBB }
ON } No. 10,915.
HABEAS CORPUS. }

On the 20th day of November, 1883, the Governor of this State issued a warran for the arrest of one C. H. Bailey, reciting therein that "whereas it has been represented to me by the Governor of the State of Oregon that C. H. Bailey stands charged with the crime of embezzlement committed in the county of Clatsop, in said State, and that he has fled from the justice of that State and has taken refuge in the State of California; and the said Governor of the State of Oregon having, in pursuance of the Constitution and laws of the United States, demanded of me that I should cause the said C. H. Bailey to be arrested and delivered to W. L. Robb; and whereas the said representation and demand are accompanied by a certified copy of an information, etc., you are therefore required to arrest," etc.

In pursuance of the command of the foregoing warrant of arrest, the alleged fugitive from justice was arrested by the Chief of Police of the city and county of San Francisco, and was delivered by him to the petitioner to be taken back to the State of Oregon for trial. While Bailey was in the custody of the petitioner Robb, under and by virtue of the authority above stated, he (Bailey) applied to the superior court of the city and county of San Francisco for a writ of *habeas corpus*, stating in his petition, among other things, that he is "unlawfully imprisoned, detained, confined

and restrained of his liberty by one W. L. Robb at the old City Hall, in the city and county of San Francisco; that the said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to wit: that petitioner is held under a warrant of arrest, a copy of which is hereto annexed and made a part hereof. That said warrant is issued without authority of law and against the law, in this, that the provisions of the act of Congress have not been complied with in this, that no copy of an indictment found or affidavit made before a magistrate charging petitioner with any crime has been produced to the Governor of California," etc.

On this petttion a writ of *habeas corpus* was issued by the superior court of the city and county of San Francisco on the 21st day of November, 1883, directed to W. L. Robb, commanding him to have the body of Charles H. Bailey "by you imprisoned and detained, as it is said, together with the time and cause of such detention and imprisonment, etc., before T. K. Wilson, judge of rhe superior court in and and for the city and county of San Francisco," at a time and place therein mentioned. The petitioner Robb refused to produce the body of Bailey in accordance with the command of the writ, and in return thereto, stated that he held him under the laws of the United States and therefore ought not to produce the prisoner. Robb also appends to his return, and makes a part thereof, copies of the papers under which his authority to hold the prisoner is asserted.

On the coming in of foregoing return and on the refusal of Robb to have the body of Bailey before the court as commanded by the writ, the superior court adjudged Robb guilty of a contempt of court and imprisoned him therefor. It is this imprisonment of which he complains and from which he seeks to be released by this writ of *habeas corpus* granted him by this court, and which is now the subject of consideration.

It is no part of our duty to decide whether the authority under which Robb holds the prisoner Bailey is sufficient or not. Neither is it incumbent on us to decide whether Bailey is held under the authority of the United States, and if so, how far it is competent for the court below to inquire into the legality of the proceedings under which he is held. Whether an affidavit or indictment must accompany the requisition or not; whether the recitals in the Governor's warrant of arrest are conclusive or simply *prima facie* evidence of the facts they recite. All these are matters for the consideration of the court issuing the writ and before whom the prisoner is to be brought. The only inquiry in this case relates to the power of the court below to compel *the production of the body* of the prisoner before it, so that the cause of his imprisonment and detention can be inquired into, and on this point we have no doubt.

It was not the duty of the court issuing the writ, nor was it it obliged to accept as true, the return of the party. It was within the jurisdiction of the court, at least, to inquire into the facts of the case and the alleged cause of detention, and to this end it was proper that the prisoner should be brought into the presence of the

court, in obedience to the command of the writ, whereupon the prisoner would have had a right to traverse the return. (People ex rel. *vs.* Donohue, 84 N. Y., 438; People *vs.* Brady, 56 Id. 182; Norris *vs.* Newton, 5 McLean, 99; State *vs.* Schleman, 4 Harr. (Del.) 577.) This the petitioner refused to do, and by such refusal was guilty of a contempt of court.

Writ dismissed and prisoner remanded.

MORRISON, *C. J.*

We concur:

MYRICK, *J.*,
SHARPSTEIN, *J.*,
THORNTON, *J.*,
McKEE, *J.*,
McKINSTRY, *J.*

34 In the Supreme Court of the State of California. In Bank.

No. 10915.—Habeas Corpus.

Ex parte W. L. ROBB.

To the hon. the supreme court of the State of Cal.:

The undersigned respectfully petition the court to grant a rehearing in the above cause.

On the following grounds the undersigned failed to present with sufficient clearness in his brief the real issue in the case, which was the jurisdiction of the superior court, and his brief was too long, and thereby the issue escaped the notice of the court. The case has been examined in the circuit court of the United States, and a different conclusion reached January 19th, 1884.

In a matter of so great importance, it is desirable that the decision of the State courts should harmonize with those of the United States. I, therefore, respectfully solicit leave to argue the case for such reasonable time as you may accord, and your petitioner will every pray.

Respectfully, ALFRED CLARKE,
Counsel for Petitioner.

Endorsed: Filed January 21st, 1884. J. W. McCarthy, clerk. By J. S. Kilsby, deputy clerk.

36 In the Supreme Court of the State of California. In Bank.

January 21st, 1884.—10915.

Ex Parte ROBB.

Extract from the Minutes.

Rehearing denied. THE COURT.

37 In Supreme Court of the United States.

W. L. ROBB, Plaintiff in Error,
against
P. CONNOLLY, Defendant in Error.

Know all men by these presents, that we, Thomas W. Bethell and Robert Day, of the city and county of San Francisco, are held and firmly bound unto the said P. Connolly, of the said place, in the sum of two hundred dollars, lawful money of the United States, to be paid to the said P. Connolly, his executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this 30th day of January, 1884.

38 Whereas the above-named W. L. Robb hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the supreme court of the State of California in a certain proceeding, wherein said W. L. Robb was petitioner and said P. Connolly was respondent.

Now, therefore, the condition of this obligation is such, that if the above-named W. L. Robb shall prosecute his said writ of error to effect, and answer all costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

THOS. W. BETHELL.
ROBT DAY.

Sealed and delivered in presence of—
JOHN W. MOFFITT.

39 STATE OF CALIFORNIA, } ss:
City and County of San Francisco. }

Thomas W. Bethell and Robert Day, being duly sworn each for himself, deposes and says that he is a resident of the city and county of San Francisco, in the State of California, and is worth the sum of two hundred dollars, exclusive of property, exempt from execution, and over and above all debts and liabilities.

ROBT DAY.
THOS. W. BETHELL.

Subscribed and sworn to before me, this 30th day of Jan'y, A. D. 1884.

D. C. VAN NOSTRAND, *Dep. County Clerk.*

40 Endorsed: In Supreme Court of the United States. W. L. Robb, plaintiff in error, *vs.* P. Connolly, defendant in error. Bond on writ of error. The form of the within bond, and the sufficiency of the sureties thereon, are hereby approved. Dated —— A. D. 1884. R. F. Morrison, chief justice.

41 In the Supreme Court of the State of California.

I, J. W. McCarthy, clerk of the supreme court of the State of California, do hereby certify that the foregoing forty-four pages, written

pages, numbered from one to forty-four, both inclusive, are a true copy of the record, and of all the proceedings in the cause therein entitled, and that the same together constitute the return to the annexed writ of error. I further certify that the printed opinion hereto attached is a true and correct copy of the original, delivered at the rendering of the decision in the therein-entitled cause, January 10, A. D. 1884.

Witness my hand and the seal of the court, this 8th day of Feb., A. D. 1884.

[SEAL.] J. W. McCARTHY, *Clerk.*

42 Endorsed: No. ——. Supreme Court of the United States. W. L. Robb, plaintiff in error, *vs.* P. Connolly, defendant in error. In error of the supreme court of California. H. G. Seiberst, San Francisco, Cal'a, counsel for plaintiff in error. A. C. Searle, San Francisco, Cal'a, counsel for defendant in error.

43 In the Supreme Court of the United States.

Assignment of Error and Prayer for Reversal.

W. L. ROBB, Plaintiff in Error,

vs.

P. CONNOLLY, Defendant in Error.

To the Honorable the Supreme Court of the United States:

The plaintiff in error specifies the error of which he complains as follows:

The honorable the supreme court of the State of California erred in deciding as they did decide: "Neither is it incumbent on us to decide whether Bailey is held under the authority of the United States; and, if so, how far it is competent for the court below to inquire into the legality of the proceedings under which he is held. Whether an affidavit or indictment must accompany the requisition or not, whether the recitals in the governor's warrant of arrest are conclusive, or simply *prima facie* evidence of the facts they recite, all these are matters for the consideration of the court issuing the writ, and before whom the prisoner is to be brought. The only inquiry in this case relates to the power of the court below to compel the production of the body of the prisoner before
44 it, so that the cause of his imprisonment and detention can be inquired into; and on this point we have no doubt.

"It was not the duty of the court issuing the writ, nor was it obliged, to accept as true the return of the party. It was within the jurisdiction of the court at least to inquire into the facts of the case and the alleged cause of detention; and to this end it was proper that the prisoner should be brought into the presence of the court, in obedience to the command of the writ; whereupon the prisoner would have had a right to traverse the return.

"People *ex rel. vs.* Donohue, 84 N. Y., 438.

"People *vs.* Brady, 56 *Id.*, 182.

"Norris *vs.* Newton, 5 McLean, 99.

"State *vs.* Schleman, 4 Harr. (Del.), 577.

"This the petitioner refused to do, and by such refusal was guilty of a contempt of court.

"Writ dismissed and prisoner remanded."

Wherefore, the plaintiff in error prays that the decision complained of be reversed, and that he have such relief as may be proper in the premises.

Respectfully submitted,

A. G. SIEBERST,
Counsel for Plaintiff in Error.

45 Endorsed: No. ——. Supreme Court of the United States. W. L. Robb, plaintiff in error, *vs.* P. Connolly, defendant in error. H. G. Sieberst, San Francisco, Cal., counsel for plaintiff in error. A. C. Searle, San Francisco, Cal., counsel for defendant in error.

Endorsed on cover: California supreme court. No. 1258. W. L. Robb, plaintiff in error, *vs.* P. Connolly. Filed 19th February, 1884.